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ZURAIDA MAT

v.

EMVILLE SDN BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN MOHD YUNUS J
[CIVIL SUIT NO: S3-22-433-1999]
11 FEBRUARY 2008

C

CIVIL PROCEDURE: *Time - Extension of - Application for - Filing of witness statements - Whether reason given for seeking extension acceptable - Whether application disallowed*

CIVIL PROCEDURE: *Pre-trial - Case management - Non compliance with court's directions - Delay in filing of witness statement - Whether reason given*
D *for seeking extension acceptable - Whether application for extension disallowed*

During a case management hearing, among the case management directions that the court issued to the parties were, *inter alia* (i) by agreement, the trial was to be by way of witness statements and (ii) the plaintiff was to serve witness statement on the defence on or before
E 20 July 2007. Subsequently, the dateline of 20 July 2007 had been extended for another month upon a request made by the plaintiff's solicitors through a letter. However, at the case management proceeding on 19 November 2007, the plaintiff had informed the court that the witness statement was yet to be completed and had asked the court's
F indulgence to give another extension of two weeks for compliance. Both counsel then made oral submissions to the court pertaining to the request for an extension.

Held (dismissing plaintiff's suit):

G **(1)** After hearing submissions by both parties, the court disallowed the application for extension of time to file in the witness statements. The non-compliance was a serious matter that should not have occurred. The plaintiff had more than ample time to prepare her single witness statement. Initially the plaintiff was given two months
H to prepare and to serve the witness statement on the defendant. Then, upon the plaintiff's application by letter, the period was extended by one month. The reason given by the plaintiff's solicitor when seeking the one-month extension was not a good one. It was beyond imagination that a witness statement for just one witness
I could not be completed within the three month period. Litigants should never take the court for granted. When a litigant has the temerity to take the court for granted, he (or she) does it at his own peril. (para 11)

Legislation referred to:
Rules of the High Court 1980, O. 34 r. 7

For the plaintiff - Ranee Sreedharan; M/s Karpal Singh & Co
For the defendant - Thomas WK Wong; M/s Firah, Wong & Cheong

Reported by Suhainah Wahiduddin

JUDGMENT

Hishamudin Mohd Yunus J:

[1] On 19 November 2007, during a case management proceeding, I dismissed the plaintiff's suit against the defendant with no order as to costs. I did so pursuant to O. 34 r. 7 of the Rules of the High Court 1980. I did so as I was of the view that that would meet the ends of justice. I shall now state my grounds for the decision that I had made.

[2] I made such an order because of the conduct of the plaintiff ('plaintiff' here also includes the plaintiff's solicitors because at the case management stage solicitors do play an active role too). The plaintiff had not only failed to comply with the court's direction; she had also shown a lack of interest in prosecuting her claim against the defendant.

[3] Earlier, on 21 May 2007, during a case management hearing, among the case management directions that I issued to parties were:

(a) by agreement, the trial was to be by way of witness statements;

(b) the plaintiff was to serve witness statement on the defence on or before 20 July 2007;

(c) the defendant was to serve witness statements on the plaintiff on or before 31 October 2007; and

(d) the case was fixed for another case management on 19 November 2007 to ensure compliance with the direction.

[4] Prior to this, during the case management proceeding of 25 April 2006, I fixed the trial dates for three days, that is, 9, 10 and 11 January 2008.

[5] Do note that, taking into account the dateline of 20 July 2007 which was later extended for another month upon a request made by the plaintiff's solicitors through a letter dated 20 July 2007 (encl. 36), this means that I had given the plaintiff three months to prepare and serve the witness statement on the defendant.

[6] However, at the case management proceeding of 19 November 2007, much to my dismay, the plaintiffs counsel, Cik Ranee Sreedharan, informed the court that the witness statement was yet to be completed. She then asked the court's indulgence to give another extension of two weeks for compliance. Both counsels then made oral submissions to the court pertaining to the request for an extension. After hearing submissions by both parties, I disallowed the application for extension of time to file in the witness statement. As the trial dates were very close (9, 10 and 11 January 2008), if I were to accede to the plaintiff's request, then, in order to give adequate time to the defence to prepare and to serve their witness statements, I would have to adjourn the trial to another date. This would not be fair to the defendants as this case had been pending for a long time considering that the case was registered in 1999.

[7] This non-compliance, to my mind, is a serious matter that should not have occurred, for I had given the plaintiff more than ample time to prepare her single witness statement. The plaintiff, as I have said, had three months to prepare her witness statement.

[8] Now, all parties are aware that the case at hand is a pre-2000 case. It was filed in the year 1999. Even as late as the year 2007, that is to say about eight years later, the case, one sadly notes, was yet to go for trial. The court was eager to have the case tried as soon as possible. For justice delayed is justice denied. And the parties themselves knew the aspiration of the court; for I had been harping on this point (ie, the need to speedily dispose off pre-2000 cases) at every case management hearing.

[9] Prior to 19 November 2007, we have had, since 7 April 2004 several case management hearings in respect of the present case. And the plaintiff had known of the trial dates even as early as 25 April 2006. There was, therefore, no excuse whatsoever for non-compliance with the court's directions of 21 May 2007.

[10] I do not think that, by my striking out the plaintiffs claim, I have been unduly harsh with the plaintiff. I had in the past been lenient with the plaintiff. One needs only to refer to the record of proceedings to appreciate this fact. On 8 November 2004 this suit was dismissed with costs by reason of non attendance of the plaintiff and her counsel. The writ was, however, subsequently reinstated on 5 October 2005 on the plaintiff's application, although the reason given for the non-attendance of counsel was to my mind unsatisfactory (the reason given in the application to reinstate was only that there was confusion on the part of counsel on that day regarding the court to attend).

[11] In this case, the plaintiff has only one witness to call, namely, the plaintiff herself (I refer to the plaintiff's list of witness at encl. 31), meaning that there is only one witness statement to prepare and to serve. Initially the plaintiff was given two months to prepare and to serve the witness statement on the defendant (it is important to bear in mind that the defendant would not be in a position to prepare and to serve their witness statements unless and until the plaintiff serve her witness statement on the defence). Then, on the plaintiff's application by letter, the period was extended by one month. The reason given by the plaintiff's solicitor when seeking the one-month extension was not a good one (the reason given was only that the parties were trying to settle), but nonetheless I was generous and I granted the one-month extension. It is beyond imagination that a witness statement for just one witness could not be completed within the three-month period. Litigants cannot take the court for granted all the time. Indeed, they must never at all take the court for granted. And when a litigant has the temerity to take the court for granted, he (or she) does it at his (or her) own peril.